

6CF14A3J (3/1/19)

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

CIVIL ACTION NO.: JP13-22-012386

ALEXIA STIPA VS. DARYL MORGAN & DEANNA VAUGHN

ORDER ON TRIAL DE NOVO

Background

Defendants/Appellees, hereinafter “D/A”, originally filed this matter as the Plaintiffs below pursuant to 25 *Del. C.* § 5115, as an application for a forthwith summons, seeking relief under 25 *Del. C.* § 5313 where a landlord is prohibited from unlawful ouster or exclusion of tenants. A trial, before a single judge, was held below on November 20, 2022, where the D/A’s presented *pro se* and Defendant below, Alexia Stipa, hereinafter “P/A”, was represented by Caryn Sydnor, Esq. Subsequently, an Order was signed awarding judgment in favor of D/As. P/A’s counsel then filed an appeal for a *Trial de Novo* (“TDN”) on December 28, 2022. On December 30, 2022, the request was granted, and the matter was scheduled for and heard on February 2, 2023.

The parties previously stipulated at the court below to remove Defendant below, James Colson, hereinafter “Witness”, husband to P/A. Mr. Colson appears for the TDN as a witness on behalf of P/A.

The Court addressed P/A’s request for past rent to be raised in the TDN and not in the court below. 25 *Del. C.* § 5717(b) requires that any new claims not before the court below be accompanied by a Bill of Particulars (“BOP”) to be filed within 5 days of filing for an appeal. P/A’s counsel misinterpreted the statute, and thereby failed to comply. The TDN was filed on December 28, 2022, and the BOP was not filed until January 18, 2023. All newly asserted claims by P/A were denied, and the TDN moved forward only on D/A’s claim of unlawful ouster.

The Court limited testimony of the parties to facts associated with the alleged unlawful ouster, and specifically directed D/As to not delve into issues involving the Division of Family Services (“DFS”) and related Family Court proceedings.

Facts

D/A Morgan opens by stating they no longer reside in the rental unit, an out-building (“shed”), separate from the adjacent house located on the property address of 605 Hillside Avenue, Wilmington, DE 19805. Therefore, in consideration of D/A’s unlawful ouster claim, the last day for consideration is when D/As vacated the shed. D/As seek treble damages for the alleged ouster from November 1 – 5, 2022, court costs, and post judgment interest at the prevailing legal rate at time of judgment.

P/A’s counsel opens by stating P/A was unaware of any lock placed by her husband, James Colson, on an access door as she was hospitalized at the time D/As allege that they were ousted. Further, D/As were not “ousted” from the shed, therefore 25 *Del. C.* § 5313 is not applicable. If anything, essential services within the actual home may be applicable pursuant to 25 *Del. C.* § 5308.

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However, P/A argues D/As had a code for the front door, a Yale lock, therefore, they always had access to the home's facilities. P/A seeks to have this matter dismissed.

D/A Morgan testifies that the last day they can confirm access to the house was October 28, 2022. They did not try to enter October 29-31, 2022. On November 1, 2022, DFS made a home inspection visit during which it was discovered a new "deadbolt" had been placed on a side access door, and the back door had the storm door lock engaged. Both had been customary access points for D/As during their shed tenancy. D/A Morgan testifies he has audio of P/A advising DFS that they were locked out. DFS advised D/As to call the police and file an action with Family Court. Due to no access to essential services of the main home, the shed was deemed uninhabitable. As a result, D/A's child was held in DFS' custody until D/As obtained acceptable housing, a hotel, on November 3, 2022.

D/A Morgan offers, as evidence access to audio of DFS statements regarding lockout, phone call to police, 6 audio clips of Family Court proceeding(s), and photos of Defendant speaking with DFS about the lockout, should the Court deem it necessary to review. (The panel did not utilize this evidence in making its decision.)

On cross, D/A Morgan states keys were returned to P/A on November 5, 2022, in the mailbox to avoid confrontation. Their child was returned November 3rd, and they moved their belongings on November 4th. The D/As commonly used the two mentioned doors that were later locked as of November 1st. D/A Morgan testifies that the front door code, the Yale lock, may have existed before, however, he is not sure if it worked after the confrontation between the parties in August, 2022, and he is unaware what the code may have been as of November 1, 2022. D/A Morgan does not know how the code came into being. D/As were unaware of any sliding door on the opposite side of the house, and certainly never used it as they had no business being over on that side of the house.

D/A's redirect. There was no written lease. The agreement was informal, and it was created through texts. The monthly rent was \$750, but \$56 was deducted each month to cover witness James Colson's cell phone account connected to D/As' account. There was no security deposit. From November 3 – 23, 2022, they received assistance, so no money was spent on the hotel until after November 23rd at a rate of \$74 a day plus tax. D/As incurred \$200 for a U-Haul rental plus gas, but they do not have receipts.

P/A testifies the parties entered into an oral lease agreement on December 29, 2021. She preferred the D/As to use the front and back doors. The front door code was setup by D/A Deanna Vaughn herself, as well as a code to disable the house alarm. The sliding door has always been accessible as it has always been broken, which is what prompted the house alarm install. P/A was hospitalized October 16 – 28th, and November 11 – 21, 2022. She went into a Chron's Disease flare-up and became septic. Due to her illness and related hospitalizations, she does not recall every detail of what occurred. P/A spoke with DFS workers on November 1st, and she showed them the broken, unlocked sliding door and advised them of the front door code access. D/As had access to the front door and alarm apps. Marked as P/A's Ex. 1 – screen shot of D/A's access code to front door, dated November, 1, 2022, at 6:30 p.m. Marked as P/A's Ex. 2, screen shot of code alarm app taken November 1, 2022, at 6:48 p.m. P/A testifies that the only door she asked them not to use was the side door which was her child's playroom. She asked them not to use that door by text on January 29, 2022, at 2:09 p.m. – marked as P/A's Ex. 3.

P/A's husband, James Colson, installed a sliding lock, not a deadbolt, in December because D/As kept setting off the house alarm, and they kept getting bills for false alarms. All doors are alarmed. Use of the front door Yale lock bypasses the alarm. The Yale lock was checked by her husband on November 1, 2022, and the original code worked. It was common knowledge the sliding door lock was

broken. On November 4, 2022, she saw D/As with a U-Haul truck, and D/A Morgan shouted to her they were leaving. She got the key the next day. P/A testifies she had no knowledge of the issues being argued today until she received the original case summons.

On cross, D/A questions how P/A could not know about the issues of an alleged ouster if she was at the property on November 1, 2022, when DFS showed up. Further, D/A questions P/A's ability to provide credible testimony today if, as she states, she does not remember facts due to her illness and hospitalizations. P/A testifies she is no longer able to prove D/A Vaughn created the code from the Yale lock and house alarm because access was deleted as of November 6, 2022, following their move out. P/A testifies that the access doors available to D/As included the office back door with the screen door, front door with Yale lock, and the broken sliding door.

Witness James Colson. Witness put the slide lock on the side door because it was safer for their son. He did that on October 23, 2022, when his wife was in the hospital. Witness spoke to D/As about constantly setting off the house alarm. D/As had access to the front and rear doors, but they wanted them to use the front door code. Basement door has always been locked. The sliding door is always locked from the inside and not to be used by Plaintiffs.

Cross of Witness. Witness installed the slide lock without P/A's knowledge. It helped prevent their son from opening the door, constant dirty foot traffic through his playroom, and to prevent D/As from setting off the alarm. Witness testifies the D/As took it upon themselves to use the back door, so they locked the screen door and reminded them to use only the front door. They locked the screen on the back door in August, 2022. Witness is not aware if they used the front door during the day while he was at work. At night, however, he knows D/As used the back door because they kept setting off the alarm. Rent was \$750 less phone costs. Witness offered the shed to D/As because D/A Morgan was going through a "rough patch". The shed has electricity available with approximately 4-5 standard outlets. No running water, refrigerator, a/c or heat. They gave them a space heater. The shed is insulated, it is a solid room with no walls, and measures approximately 22' x 20'.

Redirect of Witness. D/As bought themselves a microwave, small refrigerator, and a/c unit. They did not come into the house often, only about 4-5 times a month.

Discussion

D/As have met their burden of proof, by a preponderance of the evidence, by establishing that from November 1 – 5, 2022, P/A obstructed their access to facilities within P/A's home. The D/As were to be given access to the home for a variety of purposes which included using the bathroom, laundry, and kitchen facilities, as well as access to cabinet space for storage, and a refrigerator in the basement. Aside from a small refrigerator testified to by Witness that the D/As purchased for themselves, the shed had none of those essential amenities.

The P/A has created a rare and egregious circumstance by **knowingly** renting an out-building, a structure that is in no way compliant with Delaware State Housing codes. Pursuant to 31 *Del. C.* §4106, the following definitions provide clarity on what are appropriate spaces for habitation:

(10) Dwelling unit. — A single unit providing complete, independent living facilities for 1 or more persons, including a mobile home, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(16) Habitable space. — Space in a structure for living, sleeping, eating

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or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered habitable space.

(36) Residence building. — A building in which sleeping accommodations, toilet, bathing, and cooking facilities as a unit are provided.

Pursuant to 25 *Del. C.* §5304, Tenant's remedies for failure to supply possession, the Panel awards D/As one (1) month's rent of \$750 for P/A's failure to provide possession of a habitable space.

Under 25 *Del. C.* §5306, Tenant's remedies relating to the rental unit. This statute is intended to address conditions of the rental unit, and any deprivation of use related to the original bargain. Section (a) reads, in part, "If such condition renders the premises uninhabitable or poses an imminent threat to the health, safety or welfare of the tenant or any member of the family, then tenant may, after giving notice to the landlord, immediately terminate the rental agreement without proceeding in a Justice of the Peace Court." The Panel awards D/As one (1) month's rent of \$750 given the condition of the rental unit was uninhabitable from the beginning of the original bargain.

Under 25 *Del. C.* §5313, a landlord is prohibited from unlawful ouster or exclusion of tenants. The Panel agrees with the court below that P/A did unlawfully obstruct D/As access to essential services within the adjacent house, services which were clearly not provided within the shed. It is clear to the Panel that the P/A, in conjunction with her husband, were angered by the D/As using, what had been over the course of the tenancy, customary access through the back and side access doors, and chose to lock them out. This statute reads, in part, "The tenant may also recover treble the damages sustained or an amount equal to 3 times the per diem rent for the period of time the tenant was excluded from the unit, whichever is greater, and the costs of the suit excluding attorney's fees." The Panel awards \$375 to D/As, calculated as treble per diem rent of \$75 for the period November 1 – 5, 2022,

Conclusion

Based upon the foregoing, the Panel enters judgment in favor of D/As in the amount of \$1,875, court costs of \$45, and post-judgment interest at the rate of 9.75% per annum.

IT IS SO ORDERED 27th day of February, 2023

/s/ Sean McCormick

SEAN MCCORMICK

DEPUTY CHIEF MAGISTRATE

ON BEHALF OF THREE JUDGE PANEL



Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).

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